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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BOURNE CO., :

Plaintiff, :

-against- :

TWENTIETH CENTURY FOX FILM :
CORPORATION, FOX BROADCASTING :
COMPANY, TWENTIETH CENTURY FOX :
TELEVISION, INC., TWENTIETH :
CENTURY FOX HOME :
ENTERTAINMENT, INC., FUZZY DOOR :
PRODUCTIONS, INC., THE CARTOON :
NETWORK, INC., SETH MACFARLANE, :
WALTER MURPHY, :

Defendants. :

07 Civ. 8580 (DAB)

**DECLARATION OF
SETH MACFARLANE IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

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I, SETH MACFARLANE, hereby declare as follows:

1. I am the creator and executive producer of the animated television series *Family Guy*. I was involved in and generally supervised the creation, development and production of the episode titled "When You Wish Upon A Weinstein" (the "Episode"). I also am the voices of the main characters in the show, Peter Griffin, Stewie Griffin, Brian, and Quagmire. The facts contained in this declaration are of my own personal knowledge, and I would and could competently testify thereto in a court of law if called to do so. I submit this declaration in

support of Defendants' motion for summary judgment dismissing the complaint of plaintiff Bourne Co. ("Plaintiff" or "Bourne").

2. *Family Guy* is a half-hour, animated, comedy television series televised on primetime and late-night cable television. The series was first televised in 1999 and is now in its seventh season.¹ The show often parodies icons from popular culture through the exploits of the Griffin family (father Peter, mother Lois, son Chris, matricidal baby son Stewie, daughter Meg, and talking dog Brian) that lives in the fictional town of Quahog, Rhode Island. *Family Guy* is known for its frequent parodies of popular TV shows, movies, songs and celebrities. The show routinely puts cartoon versions of celebrities and famous characters in awkward, ridiculous situations in order to lampoon and parody those figures and to poke fun at society's general fascination with celebrity and pop culture. The show is also known for parodying obscure movies, TV shows or other cultural phenomenon from the past. The series follows a pattern of irreverent, iconoclastic plotlines, cutting-edge dialogue, and wildly non sequitur pop-cultural references.

3. In regard to the Episode, the original story idea as we developed it and presented it was that the main character, "Peter," the bafoonish, simpleton father of the family, decides that his life would somehow be improved if he connected himself with a Jewish guy. We envisioned the episode as Peter having this kind of reverse bigotry view that would turn the bigoted "Archie Bunker" (from the 1970s TV show *All in the Family*) concept on its ear, and he would view a Jewish person as a magical being with special abilities that he just couldn't live without.

¹ The series was actually canceled after its second season, but was revived due to fan response and the retail success of the sale of series episodes on DVD. The series was then canceled a second time in 2002, but was again brought back due to viewer demand in 2005.

4. As was our normal practice, the entire *Family Guy* writing staff, consisting of myself and approximately 16-17 writers, was involved in the Episode. After we kicked story ideas around, or “broke the story,” we assigned Ricky Blitt to write the first draft of the screenplay. It later went through several re-writes with suggestions from the writing staff.

5. The Episode was produced in 2000, and was originally intended to be part of the second season of *Family Guy*. Twentieth Century Fox Film Corporation gave its creative approval to the Episode, however, it was not initially telecast as part of season two, because Fox Broadcasting Company (“FBC”) did not approve it for telecast at that time. To my understanding, the Episode was withheld from telecast at that time due to concerns of the religious content of the Episode being potentially too controversial. However, it was ultimately televised by the FBC on December 10, 2004, since by that time it had already been telecast numerous times by the Cartoon Network Inc.’s Adult Swim programming service and released on DVD without any public controversy.

6. The Episode centers around Peter and his inability to manage his family’s finances – a fact which exasperates his wife Lois. This is exemplified in the beginning of the Episode when Peter is convinced by a traveling salesman to spend all of Lois’s “rainy day” money to purchase volcano insurance. After hearing his friends talk about how men with Jewish-sounding names have helped them achieve financial success, Peter decides that he needs a Jew to help him with his finances. After a Jew “miraculously” appears and helps him with his financial problems, Peter follows his racial stereotypes to an even more ridiculous end by taking his son Chris to get a “quickie” Bar Mitzvah in Las Vegas so that he will become Jewish and be smart and successful. In a scene that parodies the famous ending scene from the 1960s film “The Graduate,” Lois rushes in to stop Chris, and explains to Peter the error of his ways. At the end,

Peter says to Lois: “I see what you’re saying. The Jewish are just like us. No better, no worse” – which, essentially, is the overall theme of the Episode.

7. The overall theme of the Episode is that Peter’s beliefs based upon racial stereotypes, even “positive” ones, are ridiculous and that no group of people is any better or worse than another because of their race or cultural heritage. Just one of the comedic values present is that although this an obvious concept, it was not obvious to Peter. In the end, Peter had to learn this ridiculously obvious lesson and the Episode illustrates Peter’s ignorance.

8. In the Episode, we had Peter sing “I Need A Jew” (the “Family Guy Song”), which we intended to evoke and parody the “saccharine sweet” song “When You Wish Upon A Star” (“Wish Upon A Star”) from the 1940 Walt Disney movie *Pinocchio*. A copy of the home video release version² of the Episode on DVD is submitted herewith as **Exhibit A**. A copy of Walt Disney’s *Pinocchio* on DVD is submitted herewith as **Exhibit B**. To us, the song was one of the major icons for the “innocence” and “wholesomeness” from times past. We intended to evoke and parody the “saccharine sweet,” “innocent” and “wholesome” worldview presented in and represented by Wish Upon A Star, by having Peter “wish upon a star” in a decidedly impure and unsavory manner based on his ignorant stereotypes. The Episode visually carries through and furthers the parody by placing Peter in a pose that emulates that of the toymaker Gepetto in *Pinocchio* sitting by the window sill gazing up at sparkling stars wishing for a “real boy” as the music for Wish Upon A Star plays in the background. Copies of video screen captures depicting

² Due to issues raised by the Broadcast Standards (also referred to in some companies as the Standards and Practices) department, which determines for each broadcaster what content is or is not appropriate based upon their own respective guidelines, an alternate version of the Family Guy Song was included in certain telecasts of the Episode. The only difference is that in the alternate version the lyric “Even though they killed my Lord” is replaced with “I don’t think they killed my Lord.”

these referenced scenes are attached hereto as **Exhibit C**. (See also *Pinocchio* DVD at time code 13:10 – 13:20; Episode at time code 6:00 – 6:20.).

9. In further parodying the fantasy world of *Wish Upon A Star* and *Pinocchio*, the Episode absurdly inserts and juxtaposes Peter’s ignorant racial stereotypes into the fantasy world by, among other things, depicting the Jews as magical creatures that come to Peter in the form of a magical spaceship that turns into a flying dreidel.

10. We also were aware of Walt Disney’s public reputation as being anti-Semitic. As another parodic undercurrent of the *Family Guy* Song, we believed that by evoking *Wish Upon A Star*, a song I always thought of as “representing” and being singly associated with Walt Disney and his company, in the *Family Guy* Song where Peter wishes earnestly for a Jew to enter his life to help him, we would both be parodying the “wholesomeness” of *Wish Upon A Star* while simultaneously engaging in the height of irony and making a sharp point about Walt Disney’s reputed anti-Semitism.

11. While the *Family Guy* Song was the first time we at *Family Guy* lampooned Walt Disney for his reputed anti-Semitism, it was not the last. In the *Family Guy* movie, “*Family Guy* presents Stewie Griffin: The Untold Story,” released in September 2005, one of the brief cutaway scenes (a trademark comedic “device” we use throughout the *Family Guy* series) depicts Walt Disney opening and arising from his cryogenic tube after his long, frozen sleep (another persistent widespread rumor about Disney was that he had himself cryogenically frozen at death), and having the following exchange with the scientist that defrosted him:

“Scientist: [Scientist unfreezes Walt’s body] Welcome Back, Mr. Disney.

Walt Disney: Are the Jews gone yet?

Scientist: Uhh, no...

Walt Disney: Put me back in!”

A DVD copy of “Family Guy presents Stewie Griffin: The Untold Story” is submitted herewith as **Exhibit D**. The referenced sequence can be seen at time code 56:28 – 56:39 on the DVD. For the Court’s convenience, however, a short clip showing only the referenced scene with Walt Disney is provided on the disk annexed hereto as **Exhibit E**.

12. The “structure” of the parody lyrics for the Family Guy Song was initially written to the tune of Wish Upon A Star. We initially sought a license to use the music of Wish Upon A Star with the parody lyrics. The license request was denied.

13. We still wanted to do our parody of Wish Upon A Star, so we asked Walter Murphy, one of the composers for the show at that time, to compose a melody for the parody lyrics that evoked Wish Upon A Star. Walter provided us with an initial lead sheet with a melody he composed. However, Walter’s original version was so dissimilar from Wish Upon A Star (among other things, there was nothing melodically in common between the two works) that we did not believe many people in the audience who heard it would immediately recognize that we were trying to parody that song in particular. So, when it came time to record the song for the Episode, I changed the Family Guy Song somewhat (basically by using the first four notes of “When You Wish Upon A Star”), and I recorded it (I was the voice of Peter Griffin) in a way I believed would let our audience understand what song it was we were parodying.

14. The melody of the Family Guy Song evokes, or shares some similarity with, Wish Upon A Star because it was precisely the song we were trying to parody. Plaintiff’s apparent accusation in this lawsuit that we simply chose to copy the music for Wish Upon A Star because, I suppose they are claiming, we couldn’t come up with any other music is patently ridiculous. *Family Guy* has composers on staff who compose original tunes, and we license an enormous

amount of other music for our episodes. If, as Plaintiff seems to be implying, we just wanted *any* music to fill the space in the Episode, we obviously could have and would have licensed other music. However, our purpose, was to parody Wish Upon A Star in the Family Guy Song, as I believe is evident, and to comment on Walt Disney's reputation as an anti-Semite.

15. The Family Guy Song is not and has never been made available for sale as a distinct work separate and apart from the Episode.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 17 day of April, 2008.



SETH MACFARLANE